



J. TYLER McCAULEY
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

October 18, 2002

TO: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Yvonne Brathwaite Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

FROM: J. Tyler McCauley *tm*
Auditor-Controller

SUBJECT: **DISPUTED ADOPTION REVIEW**

As requested by the Board, we have reviewed the actions of the Department of Children and Family Services (DCFS), Adoptions Division (Adoptions) regarding a dispute between two potential parties to an adoption, the child's foster parents and paternal relatives. Both wanted to adopt the child and Adoptions recommended placing the child with the paternal relatives, which was eventually done.

The purpose of the review was to assess the appropriateness of Adoptions' handling of this case and consisted of examination and analyses of case files, court documents, and legal codes as well as interviews with DCFS and County Counsel personnel.

Summary of Findings

This case was difficult for Adoptions to resolve because there were two well qualified, potential parties and because of the differing opinions of many of the involved individuals. Some individuals thought it would be best if the child was placed with the foster parents, while others thought it best to place the child with the paternal relatives.

While there does not appear to be a "correct answer" in this case, and Adoptions had valid reasons for its recommendation, the significant amount of dispute over this matter coupled with the issues raised in this review, cast doubt over whether the decision to award custody to the paternal relatives was as objective as should have been expected. The following are examples of problem areas noted:

- The Home Study for the foster parents was inappropriately delayed even though the court had ordered that it be performed.
- It appears that the Home Study, that was eventually prepared and failed the foster parents, was not made in an unbiased, objective manner.
- When Adoptions subsequently decided that the foster parents should pass their Home Study, neither Adoptions nor County Counsel notified the appeals court. County Counsel has cited various reasons why they believe they were not legally required to inform the court. The appeals court approved the appeal without learning that Adoptions had changed its position regarding the Home Study. Adoptions did inform the lower court that the matter had been resolved before the lower court reheard the matter as instructed by the appeals court.
- Adoptions did not comply with State regulations regarding grievance hearings.
- Adoptions released restricted information to an entity assisting the paternal relatives, in apparent violation of State law.

DCFS management indicated their belief that the difficulty of the case and their staff's frustration with dealing with the foster parents, who were not always cooperative, influenced their staff's behavior regarding this case. However, this is a significant matter and even the appearance of bias, whether real or not, should have been avoided.

DCFS management needs to take a very active role in overseeing Adoptions to ensure the staff are properly trained and have the correct orientation and attitude to perform their sensitive and critically important functions.

Management needs to consider the appropriateness of taking disciplinary action against the staff involved with this case. Their performance in other similar situations needs to be independently reviewed as well as their suitability to continue providing adoptions services. County Counsel also needs to evaluate the participation of its staff in this matter.

Because several levels of management/supervision were involved in this matter, the problems noted may not be isolated to this one particular case. In addition, certain individuals we interviewed expressed their belief these problems may be systemic in the Adoptions Division. We recommend that the Board require an independent review of a sample of adoption cases, including disputed cases, to determine whether similar problems are occurring in the Adoptions Division.

Department Response

We have reviewed this report with DCFS management. Their response is attached. We also discussed the report with County Counsel.

Details of our findings are attached. If you have any questions, please call me or have your staff call Pat McMahon at (213) 974-0729.

JTM:PM:mv

Attachments

c: David E. Janssen, Chief Administrative Officer
Marjorie Kelly, Interim Director, Department of Children and Family Services
Lloyd W. Pellman, County Counsel
Violet Varona-Lukens, Executive Officer
Public Information Office
Audit Committee

Background

This case involves a male child who was a drug baby. He was placed in foster care with Mr. and Mrs. Soto shortly after birth in January 1999. There were no relatives identified at that time to be appropriate caretakers for the child, and the adoptions process was started shortly thereafter. In May 1999, the Sotos were identified as potential adoptive parents. In July 1999, paternal relatives from Puerto Rico contacted DCFS regarding adopting the child.

Both parties wanted to adopt the child. DCFS, based on information provided by its Adoptions Division (Adoptions), recommended to the court that the paternal relatives be given custody. However, the court determined that the Sotos were the most suitable placement. DCFS appealed this decision. The appellate court ruled that the lower court must abide by DCFS' determination as long as DCFS did not abuse its discretionary authority and ordered the lower court to reconsider the matter. In May 2002, the lower court reheard the matter, found that DCFS had not abused its discretionary power, and approved adoption by the paternal relatives as DCFS recommended.

Findings

Both potential parents were well qualified and sincerely wanted to adopt the child. There clearly is no absolute correct choice as to which should have been given the child. However, we noted that many independent parties involved believed custody should have been awarded to the Sotos. Two court commissioners, the child's attorney, his psychiatrist, and a "Best Interest of the Child Analysis" performed by DCFS administration all recommended that custody be given to the Sotos. In addition, the DCFS Director and Special Assistant also believed the child should be placed with the Sotos. The primary reason for this belief was the strong bond that had developed between the Sotos and the child.

However, Adoptions also presented meaningful reasons why it would be best to place the child with the paternal parents. These included the belief that it would be in the child's best interest over the child's lifetime because it would facilitate his identity development and that no other family was as well equipped as the paternal relatives to provide the child with the necessary information regarding his birth family in order for him to develop a healthy sense of self. Adoptions also pointed out that the adoption by the paternal relative would provide the child with access to his paternal grandmother who also lives in Puerto Rico. Finally, the biological parents wanted the child placed with the paternal relatives.

While there does not appear to be a "correct answer" in this case, and Adoptions had valid reasons for its recommendation, the significant amount of dispute over this matter coupled with the issues raised in this review, cast doubt over whether the decision to award custody to the paternal relatives was as objective as should have been expected.

Home Study

Delay in Home Study

On February 1, 2000, Commissioner Losnik identified the Sotos as the most appropriate placement and instructed DCFS to finalize the adoption by the Sotos. In order to finalize the adoption, a Home Study would have to be completed. It was not until May 2001 that the Home Study was completed which indicated the Sotos had failed.

During the prolonged period of time between the Commissioner's order and the Sotos' Home Study, Adoptions had performed various other actions such as challenging the Court's decision and obtaining a Home Study on the paternal relatives. The proper procedure was to complete the Sotos' Home Study as instructed by the Court, even though Adoptions was challenging the Court's decision.

Initial Home Study

A review of the initial Home Study revealed it to be a somewhat disorganized and rambling document. Even though the court had indicated its intent to award custody to the Sotos, the report criticizes the Sotos for continuing to believe they would be given custody and continuing to pursue it. The study includes significant conjecture as to the Sotos' motivation and depicts them in the worst possible light. The conclusion includes comments regarding the appropriateness of Adoptions' decision to recommend placement with the paternal relatives, rather than the Sotos, and contains praise for the paternal relatives. The study should have dealt only with the Sotos' parental capabilities. The Home Study contains references to the Sotos interfering with the paternal relatives' visits and not being cooperative with the social workers. It is apparent that the social worker was personally upset with the Sotos.

The document gives the distinct impression of being written by a person with an intense dislike for the Sotos, and with the goal of justifying rejecting their request to adopt, rather than an evaluation of the Sotos' qualifications. There are very few positive comments. In addition, there is virtually no documentation in the case file to support the criticisms of the Sotos. The negative comments are severe enough to question why DCFS did not immediately remove the other foster child and adoptive child from their home.

We found Adoptions' negative Home Study to be particularly questionable because of other documentation that indicated Adoptions staff believed the Sotos were taking excellent care of the child and that the Sotos were successful, licensed foster parents and had previously adopted a child.

The CSW who did the study indicated she initially believed the Sotos should pass and court documents confirmed this belief. She later indicated she was just following her supervisor's instructions to fail the Sotos. Subsequently, she indicated it was a group decision within her chain of command to have the Sotos fail the Home Study. The supervisor initially indicated that she had relied on the CSW in approving the study. However, when questioned about the accuracy of the study, she indicated that the Sotos were failed because Adoptions did not think it was in the best interest of the child for the Sotos to obtain custody, rather than because they were unfit. She also indicated that we had more time to review the matter than she had had.

After the Home Study which failed the Sotos had been finalized and its results issued, DCFS determined that the Sotos should pass a Home Study. At the request of the Director, the case was assigned to another social worker who determined that the Sotos should pass a Home Study. In an interview, he indicated the decision to change the Home Study to a pass was based on two changes that had occurred since the initial study. The first change was that the Sotos had greatly reduced the number of times they took the child to the doctor. He made no inquiries as to any changes in the child's health. His decision was based solely on a visit count. We reviewed the medical information folders and compared the number of visits for the four months prior to the decision to deny the Home Study to the four month period between the denial and the decision to pass the Home Study and noted no significant reduction in the number of visits. The second reason related to a previous recommendation that the child attend preschool. The new social worker had learned that this was a blanket recommendation and that no real need had been identified for the child to attend preschool at the time. The Sotos had also subsequently placed the child on a waiting list for preschool.

These changes seem relatively insignificant and appear to have been resolvable before taking the significant action of failing the Sotos' Home Study. It is also difficult to comprehend how they formed the basis to fail the Home Study in the first place. No report has ever been prepared regarding DCFS' decision to reverse its position on the Home Study. The social worker indicated he merely informed his supervisor. We would have expected a formal detailed report that would have been reviewed by management regarding such a significant change that could affect the lives of so many people.

Because of the above matters, we believe that the decision to fail the Sotos' in the initial Home Study was not made in an unbiased, objective manner.

When Adoptions appealed the court's instructions to award custody to the Sotos, the initial study was used in the appeal. By the time the case was referred back to the lower court, DCFS had informed the lower court that the matter had been resolved.

Grievance Review

State regulations provide that applicants failing a Home Study must be provided a grievance hearing if they request one. The hearing is to be recorded and the applicant has the right to have a representative present. The applicant has 30 days from the denial notification date to request a hearing, and the agency must hold the hearing within 10 working days of receiving the grievance request.

Adoptions did not comply with State requirements in the Soto case. When the Sotos' adoption application was rejected, the notification indicated they only had 10 days to appeal. Even though Adoptions' timeframe was not in compliance with State regulations, the Sotos complied with it. In addition, rather than scheduling the hearing as required, Adoptions sent a letter back to the Sotos' attorney stating that the Sotos could request an informal meeting with the Acting Division Chief to discuss the denial. The letter also indicated that the meeting could not be recorded and that the Sotos could not bring their representative, their attorney.

A grievance hearing was never held. However, this is a moot point as Adoptions subsequently reversed its position and passed the Sotos' Home Study. Nevertheless, the fact that Adoptions did not comply with State regulations and denied the Sotos their rights is significant. In addition, if the hearing had been held, the Home Study may have been corrected before it was used in the appeal.

Confidentiality

Welfare and Institutions Code Sections 827 and 10850 require that Juvenile Court Records and DCFS case information not be released unless certain restrictions are met. We found that two DCFS social workers made repeated contacts with and shared confidential information with an entity named the Adoption Information Center which was assisting the paternal relatives in obtaining custody of the child. This was in spite of the fact that the Court had ordered the agency out of the Court hearing because of confidentiality. This entity did not qualify to receive confidential information.

At one point, the Adoption Information Center called the Child Abuse Hotline, identified themselves as having been appointed by a DCFS social worker to assist in the case, and made an allegation that the Sotos were physically abusing the child. The facts underlying the allegation were previously investigated and determined to be unfounded and this was known by the Center.

The actions of the social workers appear to have violated the Welfare and Institutions Code.

Appeals Court

The fact that the Sotos had failed the Home Study was initially communicated to the appeals court by the child's counsel. Subsequently, County Counsel used the Home Study in the appeal process. Internal County Counsel correspondence indicates that they used a brief "as an opportunity to put the department's ...negative home evaluation of the defacto parents (Sotos) before the Court of appeal" and how a subsequent brief "liberally cites from the negative home evaluation of the Sotos".

As previously indicated, when DCFS assigned the case to another social worker, he reviewed the matter and decided that, at that point in time, the Sotos should pass a Home Study. This was before the appeals court had reached an opinion.

Neither Adoptions nor County Counsel staff informed the appeals court that DCFS' position had changed. County Counsel has cited various reasons why they were not legally required to inform the court.

Welfare and Institutions Code 366.26(k)

The Sotos have raised the question as to whether Welfare and Institutions Code Section 366.26(k) required DCFS to place the child with them. This section states that, in situations similar to the Sotos, foster parents' applications shall be given preference over all other applications. However, it defines giving preference as processing their application and Home Study before any other applications are processed. It does not preclude the processing of other applications or require placement with the foster parents.

It should be noted that the appeals court previously reviewed this issue and also concluded that Section 366.26(k) did not require DCFS to place the child with the Sotos.

As previously noted, DCFS delayed, rather than expedited, the Sotos' Home Study. In that regard, we believe DCFS violated Section 366.26(k). DCFS management disagrees that they violated Section 366.26(k).

Disputed Decision

When the then DCFS director (Anita Bock) became aware of concerns over whether the Sotos were being treated fairly, she alerted the Adoptions Division Chief, made inquiries regarding the case and eventually had it reassigned to a new Adoptions Division social worker. This individual determined that the Sotos were fit parents and that they should not have failed the Home Study. However, after a thorough review, he concluded the child would be better off in the long term if placed with his relatives for the reasons previously indicated.

Ms. Bock also had this case reviewed by a Special Incident Analyst. This individual recommended that the child be placed with the Sotos. Other involved parties such as two court commissioners, the child's attorney, his psychiatrist and Ms. Bock and her special assistant, all believed the child should be placed with the Sotos. While there was significant dispute over this matter, the decision was ultimately left with Adoptions.

While there does not appear to be a "correct answer" in this case, and Adoptions had valid reasons for its recommendation, the significant amount of dispute over this matter coupled with the issues raised in this review, cast doubt over whether the decision to award custody to the paternal relatives was as objective as should have been expected.

Recommendations

The findings bring into question the impartiality and integrity of the Adoptions Division and indicate DCFS management needs to take a very active role in overseeing Adoptions' operations. Management needs to ensure the staff are properly trained and have the correct orientation and attitude to perform these sensitive and critically important functions.

DCFS management also needs to consider the appropriateness of taking disciplinary action against the staff involved with this case. Their performance in other similar situations needs to be reviewed as well as their suitability to continue providing adoptions services.

County Counsel also needs to evaluate the participation of its staff in this matter.

Because several levels of management/supervision were involved in this matter, the problems noted may not be isolated to this one particular case. In addition, certain individuals we interviewed expressed their belief these problems were systemic in the Adoptions Division. For these reasons, we recommend that the Board require an independent review of a sample of adoption cases, including disputed cases, to determine whether similar problems are occurring in the Adoptions Division.

Recommendations

DCFS Management:

Take a very active role in overseeing Adoptions operations and ensure staff are properly trained and have the correct orientation and attitude.

Consider the appropriateness of taking disciplinary action against individuals involved with this case.

Evaluate involved staff's performance in other similar situations and their suitability to continue providing adoptions services.

County Counsel Management:

Evaluate the participation of their staff in this matter.

Board of Supervisors

Require an independent review of a sample of cases, including disputed cases, to determine the extent to which similar problems are occurring in the Adoptions Division.



MARJORIE KELLY
Interim Director

County of Los Angeles
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
425 Shatto Place, Los Angeles, California 90020
(213) 351-5802

October 17, 2002

To: J. Tyler McCauley
Auditor-Controller

From: *Marjorie Kelly*
Marjorie Kelly
Interim Director

Board of Supervisors

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Second District

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HARRY N. ADOPTION REVIEW

Thank you for the opportunity to respond to the Harry N. Adoption Review and we also thank you for the opportunity to meet with the examiners to go over details of the report.

We have conducted extensive reviews of the case, the activities of staff, and the outcome for the child. It is our conclusion that there was indeed a correct answer for permanency for this child and that it was to be placed with available and qualified relatives. Our Department made that recommendation early on and was upheld by the courts through lengthy appeals. We believe that the outcome of permanence with relatives is both legally and psychologically the correct answer for this child.

Many of those who disputed the placement of Harry with his relatives did so on the basis of his long stay in the foster home and the resulting attachment with the foster family. The length of time in the foster home, however, was primarily a result of legal appeals and hearings requested by the foster parents, as well as a court order not to move Harry while those appeals played out. The legal process verified that children should not be denied the opportunity to grow up with extended family simply because a non-relative has the ability and the will to delay a placement through years of appeals.

If this case has revealed anything, it is the urgent need to examine a legal process that allows placement appeals to go on over a period of years. The developmental needs of children demand that such critical legal issues as who will be parent to a child should be determined efficiently and promptly for the benefit of all parties, but especially for the child. Certainly, recommendations about expedited hearings on appeals of placement orders, in cases such as this one, would be in order.

A clarification is also necessary regarding the home study of the foster parents. The decision to place Harry with relatives was made prior to the order for the foster family's

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home study. The outcome of the home study did not and would not affect the Department's decision to place Harry with his extended family. The issue argued in court was not whether the foster family was a suitable placement, but whether the Department properly exercised its authority to pursue placement with Harry's relatives and the court responded in the affirmative.

On the issue of the home study, we believe that the social worker identified legitimate concerns in the foster family home study and though it could be argued there was insufficient effort to identify family strengths, the issues raised were proper and sufficient to deny.

Again, thank you for the opportunity to comment. This was an extraordinarily difficult and complicated case, yet we believe the outcome for the child, to grow up with his extended family, was a good and proper outcome.

MK:mdd